Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2005-050411 11/07/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

DEVELOPMENT SERVICES OF AMERICA INC

FRANKLYN D JEANS

v.

MARICOPA COUNTY

KATHLEEN A PATTERSON

UNDER ADVISEMENT RULING

Defendant's Motion to Dismiss has been under advisement.

Capin v. S&H Packing Co., Inc., 130 Ariz. 441, 442 (App. 1981), follows the national consensus in holding that failure to obtain authority to do business in Arizona is a bar only to *maintaining* an action, not to filing one. It follows that obtaining authority allows AWQH to maintain this suit.

The gist of the Complaint is that the Maricopa County Assessor erred in calculating the full cash value of the Large Parcel owned by DSA. Plaintiff seeks to amend the Complaint to allege error in calculating the value of the Small Parcel owned by AWQH. The correction of one element of the Complaint is common under Rule 15(c). The Court might accept that DSA was named in error as the owner of the Small Parcel, and allow relation back of the action brought by AWQH. *Watts v. State*, 115 Ariz. 545, 549 (App. 1977). The Court might accept that the Large Parcel was identified instead of the Small Parcel as the result of a typographical error, as the numbers of the two parcels differ by only one digit. However, both elements cannot be accepted by the Court. The *Watts* court quoted Wright & Miller to explain the philosophy of the rule: "As long as the original complaint provides defendant with adequate notice of the conduct, transaction, or occurrence upon which plaintiff bases his claim and the parties before the court remain the same, it is reasonable to assume that defendant has knowledge of any claim plaintiff

might assert in any capacity arising out of the event in dispute." *Id.* Here, for Defendant to have received notice that *DSA* was challenging the valuation of the *Large* Parcel and then to have concluded that in fact *AWQH* was challenging the valuation of the *Small* Parcel would have required nothing less than clairvoyance.

Applying Plaintiff's alter ego argument in a slightly different context, the Court believes that *Maricopa County v. Superior Court*, 170 Ariz. 248 (App. 1991), has continuing validity despite the deletion of the gender-specific "his" from the statute. The court's analysis of the narrowing classes of persons entitled to challenge a tax valuation went through an "owner of record [or] the purchaser under a deed of trust or an agreement of sale" (notice requirement) through an "owner of property" (petition to the assessor) to a "person dissatisfied with the valuation of his property" (Tax Court or Board of Equalization). It will be noticed that even the broadest category limits "owner" to the owner of record. Plaintiff does not cite any language in the 1997 revision of the property tax appeal statutes that would expand the definition of "owner" to include *de facto* owners without title or an agreement to purchase. That DSA owned the Small Parcel when the Assessor sent out valuation notices is immaterial. AWQH was the owner of record, and therefore liable for the property tax. The financial relationship between DSA and AWQH, even supposing that Defendant somehow had knowledge of it, is immaterial to ownership of the Small Parcel. DSA therefore lacks standing to challenge the valuation of the Small Parcel, even if the Court were to allow amendment with relation back on that element.

Therefore, IT IS ORDERED:

1. Granting Defendant Maricopa County's Motion to Dismiss the Claims of Plaintiff American West Quarter Horses, Inc.

2. Denying Plaintiffs' Motion to Dismiss or Strike Defendant's Affirmative Defenses.

3. Denying Defendants' Objection/Motion to Strike Plaintiff's Surreply.